

submission of the Application for Transfer QS/IFQ to or from an ECCO on whose behalf the ECCO holds QS.

(5) *Approval criteria for an application for transfer of crab QS/IFQ to or from an ECCO.* In addition to the criteria required for approval under paragraph (i) of this section, the following criteria are also required:

- (i) The ECCO applying to receive or transfer crab QS has submitted a complete annual report(s) required by § 680.5;
- (ii) The ECCO applying to transfer crab QS has provided information on the reasons for the transfer as described in paragraph (e) of this section; and
- (iii) An individual applying to receive IFQ from an ECCO is a permanent resident of the ECC in whose name the ECCO is holding QS.

(1) *Eligible crab community right of first refusal (ROFR)*—(1) *Applicability*—(i) *Exempt Fisheries.* PQS and IPQ issued for the EBT, WBT, WAG, or WAI crab QS fisheries are exempt from ROFR provisions.

(ii) *Eligible Crab Communities (ECCs).* The ROFR extends to the ECCs, other than Adak, and their associated governing bodies. The ROFR may be exercised by the ECC entity representing that ECC.

(2) *Community representation*—(i) *CDQ Communities.* ECC entity for purposes of exercise of ROFR for any ECC that is also a CDQ community shall be the CDQ group to which the ECC is a member.

(ii) *Non-CDQ communities.* (A) Any ECC, other than Adak, that is a non-CDQ community may designate an ECC entity that will represent the community in the exercise of ROFR at least 30 days prior to the ending date for the initial application period for the crab QS program specified in the FEDERAL REGISTER.

(B) The ECC entity eligible to exercise the right of first refusal on behalf of an ECC will be identified by the governing body(s) of the ECC. If the ECC is incorporated under the laws of the State of Alaska, and not within an incorporated borough, then the municipality is the governing body; if the ECC is incorporated and within an incorporated borough, then the municipality

and borough are the governing bodies and must agree to designate the same ECC entity; if the ECC is not incorporated and in an incorporated borough, then the borough is the governing body.

(C) Each ECC may designate only one ECC entity to represent that community in the exercise of ROFR at any one time through a statement of support from the governing body of the ECC. That statement of support identifying the ECC entity must be submitted to the Regional Administrator, NMFS, Post Office Box 21668, Juneau, Alaska 99802, at least 30 days prior to the ending date of the initial application period for the crab QS program under § 680.40.

(D) The ECC ROFR is not assignable by the ECC entity.

(3) *Restrictions on transfer of PQS or IPQ out of North Gulf of Alaska communities*—(i) *Applicability.* Any community in the Gulf of Alaska north of a line at 56°20' N. lat.

(ii) *Notification of PQS or IPQ transfer.* A PQS holder submitting an application to transfer PQS or IPQ for use in processing outside any community identified under paragraph (1)(3)(i) must notify the ECC entity designated by the City of Kodiak and Kodiak Island Borough under paragraph (1)(2) of this section 10 days prior to the intended transfer of PQS or IPQ for use outside the community. At the end of that time period, the application will be approved pending meeting the criteria set forth in paragraph (i) of this section.

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§ 680.42 Limitations on use of QS, PQS, IFQ, and IPQ.

(a) *QS and IFQ use caps*—(1) *General.* Separate and distinct QS and IFQ use caps apply to all QS and IFQ categories pertaining to a given crab QS fishery with the following provisions:

(i) A person who receives an initial allocation of QS that exceeds the use cap listed in paragraph (a)(2) of this section may not receive QS by transfer unless and until that person's holdings are reduced to an amount below the use cap.

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(ii) A person will not be issued QS in excess of the use cap established in this section based on QS derived from landings attributed to an LLP license obtained via transfer after June 10, 2002 unless:

(A) The person applies to receive QS based on an LLP transferred after June 10, 2002 but prior to November 24, 2004, and

(B) The person will receive the amount of QS associated with that transferred LLP in excess of the use cap established in this section for a crab QS fishery solely because of the adjustment to legal landings available for QS allocation resulting from the BSAI Crab Capacity Reduction Program.

(iii) QS and IFQ use caps shall be based on the initial QS pools used to determine initial allocations of QS.

(2) Except for non-individual persons who hold PQS, as provided for in paragraph (a)(1)(ii) of this section, or a CDQ group, as provided for in paragraph (a)(3) of this section, a person, individually or collectively, may not:

(i) Hold QS in amounts in excess of the amounts specified in the following table, unless that person's QS was received in the initial allocation:

Fishery	CVO/CPO Use Cap in QS Units	CVC/CPC Use Cap in QS Units
(A) Percent of the initial QS pool for BBR	1.0% = 3,880,000.	2.0% = 240,000
(B) Percent of the initial QS pool for BSS	1.0% = 9,700,000.	2.0% = 600,000
(C) Percent of the initial QS pool for EBT	1.0% = 1,940,000.	2.0% = 120,000
(D) Percent of the initial QS pool for WBT	1.0% = 1,940,000.	2.0% = 120,000
(E) Percent of the initial QS pool for PIK	2.0% = 582,000	4.0% = 36,000
(F) Percent of the initial QS pool for SMB	2.0% = 582,000	4.0% = 36,000
(G) Percent of the initial QS pool for EAG	10.0% = 970,000.	20.0% = 60,000
(H) Percent of the initial QS pool for WAG	10.0% = 3,880,000.	20.0% = 240,000
(I) Percent of the initial QS pool for WAI	10.0% = 5,820,000.	20.0% = 360,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(2)(i) of this section, un-

less that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(3) A CDQ Group, individually or collectively, may not:

(i) Hold QS in excess of more than the amounts of QS specified in the following table:

Fishery	CDQ CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 10.0 percent of the initial QS pool for PIK	2,910,000
(F) 10.0 percent of the initial QS pool for SMB	2,910,000
(G) 20.0 percent of the initial QS pool for EAG	1,940,000
(H) 20.0 percent of the initial QS pool for WAG	7,760,000
(I) 20.0 percent of the initial QS pool for WAI	11,640,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(3)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(4) A person who is not an individual and who holds PQS may not:

(i) Hold QS in excess of the amounts specified in the following table:

Fishery	CVO/CPO Use Cap in QS Units
(A) 5.0 percent of the initial QS pool for BBR	19,400,000
(B) 5.0 percent of the initial QS pool for BSS	48,500,000
(C) 5.0 percent of the initial QS pool for EBT	9,700,000
(D) 5.0 percent of the initial QS pool for WBT	9,700,000
(E) 5.0 percent of the initial QS pool for PIK	1,455,000

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Fishery	CVO/CPO Use Cap in QS Units
(F) 5.0 percent of the initial QS pool for SMB	1,455,000
(G) 5.0 percent of the initial QS pool for EAG	485,000
(H) 5.0 percent of the initial QS pool for WAG	1,940,000
(I) 5.0 percent of the initial QS pool for WAI	2,910,000

(ii) Use IFQ in excess of the amount of IFQ that results from the QS caps in paragraph (a)(4)(i) of this section, unless that IFQ results from QS that was received by that person in the initial allocation of QS for that crab QS fishery.

(iii) A non-individual person that holds PQS, and all affiliates of that person, is limited to a QS and IFQ use cap that is calculated based on the sum of all QS or IFQ held by that PQS holder and all QS or IFQ held by any affiliate of the PQS holder.

(5) IFQ that is used by a crab harvesting cooperative is not subject to the use caps in this paragraph (a) except as provided for in paragraph (a)(7) of this section.

(6) Non-individual persons holding QS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual QS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit.

(7) In a calendar year, an entity as described in §680.40(c)(5)(ii), (c)(5)(iii), or (c)(5)(iv), may not use more than 1,000,000 lb (453.6 mt) of IFQ derived from converted CPO QS in the BBR or BSS crab QS fisheries.

(b) *PQS and IPQ Use Caps.* (1) A person may not:

(i) Hold more than 30 percent of the initial PQS pool in any crab QS fishery unless that person received an initial allocation of PQS in excess of this limit. A person will not be issued PQS in excess of the use caps established in this section based on PQS derived from the transfer of legal processing history after June 10, 2002.

(ii) Use IPQ in excess of the amount of IPQ that results from the PQS caps in paragraph (b)(1)(i) of this section unless that IPQ is yielded from PQS that was received by that person in the initial allocation of PQS for that crab QS fishery.

(2) A person may not use more than 60 percent of the IPQ issued in the BSS crab QS fishery with a North region designation during a crab fishing year except that a person who:

(i) Holds IPQ; and

(ii) Has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed will not be considered to use any IPQ in the BSS crab QS fishery with a North region designation if that IPQ meets the requirements described in paragraph (b)(7) of this section.

(3) Non-individual persons holding PQS will be required to provide, on an annual basis, a list of persons with an ownership interest in the non-individual PQS holder. This list of owners shall be provided to the individual level and will include the percentage of ownership held by each individual. This annual submission of information must be submitted as part of the complete annual application for crab IFQ/IPQ permit. A person will be considered to be a holder of PQS for purposes of applying the PQS use caps in this paragraph if that person:

(i) Is the sole proprietor of an entity that holds PQS; or

(ii) Directly or indirectly owns a 10 percent or greater interest in an entity that holds PQS.

(iii) A person that holds PQS is limited to a PQS use cap that is calculated based on the sum of all PQS held by that PQS holder and all PQS held by any affiliate of the PQS holder.

(iv) A person that holds IPQ is limited to an IPQ use cap that is calculated based on the sum of all IPQ held by that IPQ holder and all IPQ held by any affiliate of the IPQ holder.

(4) Before July 1, 2007, IPQ for the BSS, BBR, PIK, SMB, and EAG crab QS fisheries may not be used to process

crab derived from PQS based on activities in an ECC, except in the geographic boundaries established in paragraph (b)(4)(iv) of this section, except that, before July 1, 2007:

(i) Ten percent of the IPQs that are issued for a crab QS fishery or an amount of IPQ that yields up to 500,000 raw crab pounds (226.7 mt) on an annual basis, whichever is less, may be leased for use in processing crab outside that ECC. The amount of IPQ that is issued on an annual basis for use in that ECC and the amount that may be leased outside that ECC will be established annually and will be divided on a pro rata basis among all PQS permit holders issued IPQ for use in that ECC for that year.

(ii) IPQ in excess of the amounts specified in paragraph (c)(7)(i) of this section may be used outside the ECC for which that IPQ is designated if an unavoidable circumstance prevents crab processing within that ECC. For purposes of this section, an unavoidable circumstance exists if the specific intent to conduct processing for a crab QS species in that ECC was thwarted by a circumstance that was:

- (A) Unavoidable;
- (B) Unique to the IPQ permit holder, or to the processing facility used by the IPQ permit holder in that ECC;
- (C) Unforeseen and reasonably unforeseeable to the IPQ permit holder;
- (D) The circumstance that prevented the IPQ permit holder from processing crab in that ECC actually occurred; and
- (E) The IPQ permit holder took all reasonable steps to overcome the circumstance that prevented the IPQ permit holder from conducting processing for that crab QS fishery in that ECC.

(iii) This provision does not exempt any IPQ permit holder from any regional designation that may apply to that IPQ.

(iv) Geographic boundaries for use of IPQ outside ECCs for purposes of paragraph (b)(4) of this section:

- (A) Akutan, False Pass, King Cove, or Port Moller: IPQ may not be used outside of the boundaries of the Aleutians East Borough as those boundaries are established by the State of Alaska;
- (B) Kodiak: IPQ may not be used outside of the boundaries of the Kodiak Is-

land Borough as those boundaries are established by the State of Alaska;

(C) Adak: IPQ may not be used outside of the boundaries of the City of Adak as those boundaries are established by the State of Alaska;

(D) Unalaska/Dutch Harbor: IPQ may not be used outside of the boundaries of the City of Unalaska as those boundaries are established by the State of Alaska.

(E) St. George: IPQ may not be used outside of the boundaries of the City of St. George as those boundaries are established by the State of Alaska.

(F) St. Paul: IPQ may not be used outside of the boundaries of the City of St. Paul as those boundaries are established by the State of Alaska.

(5) Any person harvesting crab under a Class A CVO or Class A CVC IFQ Permit, except as provided under paragraph (b)(4) of this section, must deliver that crab:

- (i) Only to RCRs with unused IPQ for the same crab QS fishery; and
- (ii) Only to an RCR in the region for which the QS and IFQ is designated.

(6) Any person harvesting crab under a Class B IFQ, CPO IFQ, CVC IFQ, or CPC IFQ permit may deliver that crab to any RCR.

(7) Any IPQ crab that is received by an RCR will not be considered use of IPQ by an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed under § 680.7(a)(7) or paragraph (a)(8) of this section if:

- (i) That RCR is not affiliated with an IPQ holder who has a 10 percent or greater direct or indirect ownership interest in the shoreside crab processor or stationary floating crab processor where that IPQ crab is processed; and
- (ii) The following conditions apply:

- (A) The IPQ crab is:
 - (1) BSS IPQ crab with a North region designation;
 - (2) EAG IPQ crab;
 - (3) PIK IPQ crab;
 - (4) SMB IPQ crab;
 - (5) WAG IPQ crab provided that IPQ crab is processed west of 174 degrees west longitude; or
 - (6) WAI IPQ crab; and
- (B) That IPQ crab is processed at:

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(1) Any shoreside crab processor located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule; or

(2) Any stationary floating crab processor that is:

(i) Located within the boundaries of a home rule, first class, or second class city in the State of Alaska in existence on the effective date of this rule;

(ii) Moored at a dock, docking facility, or at a permanent mooring buoy, unless that stationary floating crab processor is located within the boundaries of the city of Atka in which case that stationary floating crab processor is not required to be moored at a dock, docking facility, or at a permanent mooring buoy; and

(iii) Located within a harbor, unless that stationary floating crab processor is located within the boundaries of the city of Atka on the effective date of this rule in which case that stationary floating crab processor is not required to be located within a harbor; or

(C) The IPQ crab is:

(1) Derived from PQS that is, or was, subject to a ROFR as that term is defined at § 680.2;

(2) Derived from PQS that has been transferred from the initial recipient of those PQS to another person under the requirements described at § 680.41;

(3) Received by an RCR who is not the initial recipient of those PQS; and

(4) Received by an RCR within the boundaries of the ECC for which that PQS and IPQ derived from that PQS is, or was, designated in the ROFR.

(c) *Vessel limitations.* (1) Except for vessels that participate solely in a crab harvesting cooperative as described under § 680.21 and under the provisions described in paragraph (c)(4) of this section, no vessel may be used to harvest CVO or CPO IFQ in excess of the following percentages of the TAC for that crab QS fishery for that crab fishing year:

- (i) 2.0 percent for BSS;
- (ii) 2.0 percent for BBR;
- (iii) 2.0 percent for EBT;
- (iv) 2.0 percent for WBT;
- (v) 4.0 percent for PIK;
- (vi) 4.0 percent for SMB;
- (vii) 20.0 percent for EAG;
- (viii) 20.0 percent for WAG; or

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(ix) 20.0 percent for the WAI crab QS fishery west of 179° W. long.

(2) CVC or CPC IFQ used on a vessel will not be included in determining whether a vessel use cap is met.

(3) A single person who receives an initial allocation of QS that results in IFQ that is in excess of the vessel use caps, in paragraph (c)(1) of this section, that person may catch and retain crab harvested with the resulting IFQ with a single vessel. However, this provision does not apply to IFQ resulting from QS derived from transfer of an LLP crab license that occurred after June 10, 2002. Two or more persons may not catch and retain their IFQ with one vessel in excess of these limitations.

(4) A vessel use cap would not apply to a vessel if all of the CVO or CPO IFQ used on that vessel in a crab fishing year is held by a crab harvesting cooperative. This exemption is forfeited if that vessel is used to harvest any amount of CVO or CPO IFQ not held by a crab harvesting cooperative during the same crab fishing year.

(5) A person holding a CVC or CPC IFQ permit is required to be aboard the vessel upon which their IFQ is being harvested.

(6) A person holding CVO or CPO QS does not have to be aboard the vessel being used to harvest their IFQ if they hold at least a 10 percent ownership interest in the vessel upon which the IFQ is to be harvested and are represented on board the vessel by a crab IFQ hired master employed by that QS holder as authorized under § 680.4.

(7) Ownership of a vessel means, for purposes of this section:

- (i) A sole proprietor; or
- (ii) A person that directly or indirectly owns a 10 percent or greater interest in an entity that owns a vessel.

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§ 680.43 Determinations and appeals.

See § 679.43 of this chapter.

§ 680.44 Cost recovery.

(a) *Cost recovery fees*—(1) *Responsibility.* The person documented on the